D.B. INCOME TAX APPEAL NO. 34/2004.
D.B. INCOME TAX APPEAL NO. 35/2004.
CIT II JODHPUR VS. ANAND BHATI
DATE OF ORDER : 08.08.2005.

HON'BLE MR. RAJESH BALIA,J.
HON'BLE MR. R.S. CHAUHAN, J.

Mr. Sangeet Lodha for the appellant.
Mr. Anjay Kothari for the respondents.

These two appeals have been filed by the Revenue against the order of the Tribunal dated 13.5.2003 by which the appeal of the Revenue and cross-objection by the assessee relating to appeals arising out of Assessment Years 1994-95, 1995-96 respectively have been decided by a common order.

The question which was framed at the time of admission of this appeal reads as under:

> "Whether on the facts and in the circumstance of the case, the learned Tribunal was legally correct in dismissing the appeal of the Department and upholding the order of the learned CIT (A), directing to exclude the income of Smt. Munni Devi and two other AOPs and whether the finding of the learned Tribunal is perverse".

The facts of this case are similar to D.B.Income Tax Appeal No.40/2004 CIT vs. Om Prakash Bhati. The said appeal related to the assessment of brother of present respondent assessee as the question related to the income

of Smt. Munni Devi wife of respondent assessee and two other associates of persons, whose income was clubbed with the income of the assessee for two assessment years and as protective measure, Smt. Munni Devi and two other associates were subjected to the protective assessment in respect of the income shown to be the income of the respective person included in the income of the respondent assessee.

The additions were made on the ground that the respective assessees had shown their no knowledgeablity about the affairs of the income earned by them. However, the CIT (Appeals) as well as the Tribunal finding that all the persons whose income has been clubbed in the hands of the respondent assessee are the representatives of the relatives of the assessee's family and were assessed in their own right. Munni Bai was assessed at least since 1984-85, whereas mother and brother of the assessee had been since assessed before 1982-83, which furnishes the foundation that they had sufficient capability in the source of income from which new investments could have been made in shares under relevant orders. Subsequent to two orders in question also, the assessments have been made in respect of

respective assessees in their substantive capacities.

On the aforesaid premises, it was held by the CIT (Appeals) as well as the Tribunal that the income of the existing assessees could not have been clubbed with the income of the respondent assessee as such, merely on the basis of showing their ignorance about the general affairs of the business, which could be conducted through responsible member of family.

Be that as it may, the finding recorded by the Tribunal as well as the CIT is founded on the relevant materials on the question of clubbing of the income of the different persons with the income of the assessee, therefore, they do not require any interference in these appeals. Moreover, we have been informed that the respective persons, whose income for the assessment year 1994-95, 1995-96 have been assessed on protective basis and substantively in the hands of the assessee have since made declaration under K.V.S.S., and the same has been certified by C.I.T. which brings all disputes concerning such declared income beyond further scrutiny.

In view thereof, there is no merit in these appeals and the appeals are hereby dismissed.

No order as to costs.

(R.S. CHAUHAN)J. **(RAJESH BALIA)J.**

Anil/